

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL

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NELSON VILLARROEL,

Plaintiff,

-against-

MEMORANDUM AND ORDER

Case No. 09-CV-220 (FB) (JMA)

LUTHERAN MEDICAL SERVICES, LMC
PHYSICIAN SERVICES, P.C., SHORE ROAD
SPORT THERAPY & REHABILITATION,
JOHN AMODIO, P.T., and "JOHN DOE" 1-3
(names of fictitious persons the identities of
whom are unknown at this time),

Defendants.
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Appearances:

For the Plaintiff:

PETER D. AMANKONAH, ESQ.
The Adam Law Office, P.C.
275 Madison Avenue
Suite 1100
New York, NY 10016

For the Defendants:

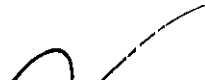
BENTON J. CAMPBELL, ESQ.
United States Attorney
Eastern District of New York
By: David Michael Eskew, Esq.
Assistant United States Attorney
271 Cadman Plaza East
Brooklyn, NY 11201

BLOCK, Senior District Judge:

On July 28, 2009, Magistrate Judge Azrack issued a Report and Recommendation ("R&R") recommending that this action be dismissed without prejudice with respect to all defendants because the plaintiff had failed to effect service of the summons and complaint, though provided ample time and opportunity. *See* R&R at 4. The R&R stated that failure to object within ten days would preclude appellate review. *See id.* at 4-5. Attorney for defendants mailed a copy of the R&R to plaintiff on July 29, 2009; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to dismiss this action in accordance with the R&R.

SO ORDERED.



s/FB



FREDERIC BLOCK/
Senior United States District Judge

Brooklyn, New York
September 23, 2009